

REMARKS

The Pending Claims

Claims 68 -151 are presently pending in the application. Claims 68 -88, 128-148, and 149-151 are directed to a closure device and a method of using a closure device. Claims 89-106 are directed to a slider. Claims 107-127 are directed to a container. Reconsideration of the pending claims is respectfully requested.

Amendments to the Claims

Claims 149-151 are new claims directed to additional features of the invention. New independent claim 149 is similar to independent claim 68 and recites the additional feature that the slider includes a first and a second jaw defining a first slot having a first width, and that the first end stop has a second width which is greater than the first width. New claims 150 and 151 are dependent from claim 149 and recite features similar to those recited in claim 79 and 80. Accordingly, no new subject matter is added by way of new claims 149-151.

Summary of the Office Action

The Office Action rejects claims 68-86, 88-125, 127-146, and 148 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent 5,161,286 (Herrington Jr. et al.) in view of U.S. Patent 3,990,130 (Hattori). The Office Action also rejects claims 87, 126, and 147 as obvious over Herrington Jr. et al. in view of Hattori and in further view of U.S. Patent 5,871,281 (Stohlmeier et al.).

Discussion of the Claim Rejections

Applicants respectfully disagree with the rejections of previously pending claims 68-148 under 35 U.S.C. § 103(a) as obvious in light of Herrington Jr. et al., Hattori, and Stohlmeier et al. To establish a prima facie case of obviousness, there must be a suggestion or motivation, either in the prior art or in the knowledge available to those of skill in the art, to modify or combine the prior art references. *See, e.g.*, M.P.E.P. 2143.01. The fact that the references relied upon can be combined is insufficient to support an obviousness rejection unless the prior art also suggests or motivates the combination. *Id.* That the claimed combination is within the capabilities of those of ordinary skill in the art is insufficient to establish a prima facie case of obviousness. *Id.* Applicants submit that there is no motivation or suggestion to combine Herrington Jr. et al. with Hattori to arrive at the claimed

combination wherein "said first jaw is positioned above the fastening strips in the Z axis" as is required in independent claims 68, 89, 107, and 128 and claims depending therefrom.

The slider 11 disclosed in Hattori functions to align and join airtight tapes 2 that are provided in parallel and separated by a slot 3 at the center of a tape material 1. *See, e.g.*, col. 2, ll. 42-51; FIGS. 1 and 2. Accordingly, referring to FIG. 2, the airtight tapes 2 are aligned in and define a continuous plane of tape material 1. As illustrated in FIGS. 2 and 6, because the slider 11 of Hattori must traverse the plane defined by the airtight tape material 1 through the slot 3 which the slider is closing, the slider lock 27 must be positioned above the air tight tapes 2. It would not be possible to position the slider lock 27 below the tops of the fastener strips.

However, referring to FIGS. 6 and 7, in Herrington Jr. et al., the slider 10, 32 functions to join fastening strips 14, 15, that are located at the top edges of two overlying plastic sheets 12, 13. The slider 10, 32 straddles the fastening strips 14, 15 between a pair of wings 21, 22 that extend parallel to the plastic sheets 12, 13 and below the tops of the fastening strips. As illustrated in FIG. 7, the recesses 32 are conveniently located at the bottom of the wings on either side of the plastic sheets. There is no teaching or suggestion to locate the recesses 32 elsewhere. Moreover, because the slider 10, 32 of Herrington Jr. et al. straddles the fastening strips 14, 15 and plastic sheets 12, 13, rather than traverses a plane defined by the fastening strips and plastic sheets, there is no motivation or suggestion to locate the recesses above the fastening strips as is necessary in Hattori. Therefore, Applicants respectfully submit that the claimed combination of Herrington Jr. et al. and Hattori is improper and does not render the previously presented claims obvious.

Regarding new claims 149-151, they are directed toward a closure device having a first jaw and a second jaw that define a first slot having a first width and, furthermore, where the first end stop has a second width that is greater than the first width. Neither Herrington Jr. et al. nor Hattori disclose such a feature. Herrington Jr. et al. teaches an end clamp 31 having a hook portion 31a that, as appears in FIG. 7, is coplanar with and extends from the side of the end clamp. The hook portion 31a engages the correspondingly aligned recess 32a on the slider 32. Herrington Jr. et al. does not describe or teach a slot having a first width or a first end stop having a second width that is greater than the first width.

Hattori also fails to teach a slot having a first width or a first end stop having a second width that is greater than the first width. Referring to FIGS. 2 and 18, Hattori teaches a hook 13 that slides around one of arms 30, 31, 32, 33. However, the hook and the arms all appear to have the same width. Accordingly, Hattori does not describe or teach a slot having a first width or a first end stop having a second width that is greater than the first width. Applicants


In re Appln. of Savicki
Application No. 09/979,525

therefore respectfully submit that new claims 149-151 are patentable over Herrington Jr. et al., Hattori, and Stohlmeier et al.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



John M. Augustyn, Reg. No. 33,589
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, Illinois 60601-6780
(312) 616-5600 (telephone)
(312) 616-5700 (facsimile)

Date: April 20, 2004